IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5219 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MODERN PETROFILS (A UNIT OF MODERN SYNTEX (I) LTD.)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5219 of 2004

MR SP HASURKAR for Petitioner No. 1-2

MR NILESH A PANDYA for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 19/08/2004

ORAL JUDGEMENT

In this petition under Article 226 of the

Constitution of India, the petitioners have prayed for an appropriate writ, direction or order quashing and setting aside the demand notice dated 26.3.2004 issued by the Taluka Panchayat, Karjan, Vadodara by which the petitioners are directed to pay an amount of Rs.7,99,911/- towards the land revenue for the various lands owned by the petitioners considering the land in question in Category-C and charging the land revenue at the rate of 0.25 ps. per sq.mtr. per annum. The petitioners have also challenged to declare the notification dated 26.12.2003 issued by the State Government under Section 214 of the Bombay Land Revenue Code to amend the Gujarat Land Revenue Rules, 1972 to be bad, illegal and arbitrary.

2. Shri N.A.Pandya, Learned Advocate for the petitioners had mainly submitted that the demand notice dated 23.3.2004 is in gross violation of the principles of natural justice and before issuing the demand notice and to recover the land revenue considering the land in question in Category-C as per the notification dated 26.12.2003 and as per the Gujarat Land Revenue (3rd amendment) Rules, 2003, no opportunity was given to the petitioners individually. He has further submitted that the respondent no.2 without undertaking assessment and without giving an opportunity of hearing issued demand notice dated 23.3.2004 which has resulted into payment of enhancing the liability of payment to the tune of Rs.7,99,911/- while the same was earlier only Rs.29,911/for the year 2002-2003. He has further submitted that even the notification dated 26.12.2003 issued by the Government of Gujarat amending the Gujarat Land Revenue Rules, 1972 deleting the land in question from Category-E and to put the same in Category-C and to fix the liability to pay revenue at the rate of 0.25 ps. per sq.mtr. per annum is also required to be quashed and set aside. Before issuing the said notification and before delisting the land in question from Category-E and before putting the land in question in Category-C, no opportunity of hearing has been given to the petitioners individually. He has relied upon the judgment of this Court in the case of Girnar Stone Quarry Vs. State of Gujarat & Others reported in 2003 (3) GCD 2466 (Guj) and the judgment of this Court in this case of Fit Tight, Nuts and Bolts Ltd. Vs. State of Gujarat & Others reported in 1984 (1) GLR 261.

3. On the other hand, Shri Sud, Ld. AGP has submitted that before issuing the notification and amending the Gujarat Land Revenue Rules, 1972, the draft rules were published as required under Section 21(2) of

the Bombay Land Revenue Code, 1879 vide Government Notification dated 7.7.2003 and objections and suggestions were also invited from all the persons likely to be affected thereby till 7.8.2003. He has further submitted that after considering the objections and suggestions which were received in respect of the said draft notification, the Gujarat Land Revenue Rules, 1972 has been amended which is now known as Gujarat Land Revenue (3rd Amendment) Rules, 2003. He has further submitted that so far as the petitioners are concerned, it is not even the case of the petitioners that they have submitted any objections or suggestions to the notification published in the draft rules and therefore, it is not open for the petitioners now to contend that the opportunity was not given to the petitioners. He has further submitted that as held by the Honourable Supreme Court in the case of Visakhapatnam Port Trust and Another Vs. Ram Bahadur Thakur Pvt.Ltd. & Others reported in (1997) 4 Supreme Court Cases 582, in a matter of taxation and enacting a law there is no requirement to hear and/or give opportunity to individual persons. He has further submitted that hearing is not required to be afforded to the parties affected by legislative action or action of a delegated legislative authority imposing any tax, fee or charges. He has also further submitted that in fact, the demand notice was issued by the Taluka Development Officer, Karjan on the basis of the Government Notification dated 26.12.2003 and as per the Gujarat Land Revenue (3rd Amendment) Rules, 2003, therefore, there was no question of giving any opportunity to the petitioners by the Taluka Development Officer as the Taluka Development Officer has to simply follow the rules under the Gujarat Land Revenue Rules. Therefore, he requested to dismiss the present Special Civil Application.

4. Heard the Learned Advocates appearing for the parties.

5. Under Section 214 of the Bombay Land Revenue Code, the State Government is authorized to frame the rules with regard to the assessment by publishing the notification in the Official Gazette. Exercising the said powers, the Gujarat Land Revenue Rules, 1972 were framed. Thereafter, after following the necessary procedure as required under Section 21(2) of the Bombay Land Revenue Code to amend the Gujarat Land Revenue Rules, draft rules were published in the Government Gazette and vide Government notification dated 5.7.2003, the objections and suggestions were also invited from all the persons likely to be affected till 7.8.2003. After considering the objections and suggestions which were

received in respect of the said draft notification and after considering the same, the State Government has amended the Gujarat Land Revenue Rules, 1972. Therefore, it cannot be said that the procedure as required under the relevant provisions is not followed. It is also borne from the record that in fact, the petitioners have not submitted any objections or suggestions against the draft rules and allowed the land revenue rules to be amended. Therefore, it is not open for the petitioners now to challenge the said notification and amendment in Gujarat Land Revenue Rules, 1972 and make a grievance that opportunity was not given to the petitioners individually. In fact, the petitioners had not availed the opportunity which was given to them by submitting objections or suggestions. So far as the argument on behalf of the petitioners to give opportunity of hearing to individuals is concerned, considering the judgement of this Court in the case of Surat Khedut Samaj Vs. State of Gujarat reported in 1995(2) GLH Page 201, no personal hearing is required to be given to affected parties while levying cess. It was a case where the cess was levied under Section 149 of the Gujarat Panchayat Act but the same analogy would be made applicable in the present case also. Considering the aforesaid facts and circumstances, the contention on behalf of the petitioners that the notification dated 26.12.2003 is required to be quashed and set aside on the ground that individual hearing was not given to the petitioners is required to be negatived as the same has no substance. So far as the argument on behalf of the petitioners that fixation of cess at the rate of 0.25 ps. per sq.mtr. per annum is too excessive and too harsh and therefore, it should be struck down. Fixation of the cess is a policy decision. Even if the same is considered to be harsh then also, the same cannot be struck down as held by the Honourable Supreme Court in the case of Prafulla Kumar Das and Others Vs. State of Orissa and Others reported in (2003) 11 SCC 614, the only thing which is required to be considered by this Court is whether there was an authority to levy cess and/or frame rules under the relevant provisions of law or not. As held by the Honourable Supreme Court in the case reported in Prafulla Kumar Das and Others (Supra), mere hardship is no ground to strike down a valid resolution. Considering the aforesaid facts and judgement of the Honourable Supreme Court, the argument canvassed by the petitioners with regard to hardship which may be caused to the petitioners also cannot be considered for the purpose of striking down the aforesaid rules. No other arguments are canvassed.

6. Considering the aforesaid facts and circumstances

of the case, the petition fails. Rule is discharged. Adinterim relief granted earlier stands vacated forthwith.

(M.R.Shah, J)
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